IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12014 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALANBHAI G. RATHOD

Versus

STATE OF GUJARAT

MR HR PRAJAPATI for Petitioner No. 1
MS MITA PANCHAL, AGP for Respondents No. 1 to 3
MS PJ DAVAWALA, Addl. Central Govt. Standing Counsel for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 21.6.2003 passed by the District Magistrate, Bharuch, in exercise

of powers under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act") directing the detention of the petitioner and petitioner came to be detained in pursuance of the said order on the same day.

2. The grounds served upon the petitioner and placed on record indicate that on 11.1.2003, the installation of the petitioner was checked and inspected by the Mamlatdar, Jambusar, and the petitioner was the proprietor of the installation in the name and style of `Smital Petroleum'. It was found during the checking that there was a difference of 38 degree in density of the petrol. Meaning thereby that, the density was more than by 38%. It was also found that 137 liters of petrol and 52 liters of diesel was found less. The sample seized in the presence of panchas was sent to the Forensic Science Laboratory, which found that the sample which contents ordinary recovery 40 to 70% on 100 centigrade heat, was found only 38.8%. There was no explanation in this regard on behalf of the petitioner and so the detaining authority came to the conclusion that the petitioner was indulging in blackmarketing of the petrol and diesel, and was obtaining financial gains illegally. The detaining authority came to the conclusion that there was no other alternative except to prevent such activities of the petitioner by detention law and hence the order impugned in this petition.

3. Learned Advocate Mr.HR Prajapati for the petitioner, learned AGP Ms.Mita Panchal for the respondents No. 1 to 3 and learned Addl. Central Government Standing Counsel Ms. P.J. Davawala for the respondent No.4 were heard at length. Affidavit-in-reply filed by the Under Secretary, Department of Consumer Affairs, Food & Public Distribution, New Delhi, is also taken into consideration.

4. From the various contentions raised on behalf of the petitioner, and controverted by the AGP and learned Addl. Central Government Standing Counsel, from rival contentions, it appears that the matter can be disposed of on the ground that whether the right of the petitioner as guaranteed under Article 22(5) of the Constitution of India is breached. My attention was drawn to the documents placed on record and served upon the petitioner at page 73, 74 and 75 of the compilation of this Spl. Civil Application and the original one. The documents placed at page 73, appears to be the invoice of the Hindustan Petroleum Corporation Limited while pages 74

and 75 is the seizure order purported to have been passed by the Mamlatdar. On going through both the documents carefully, it clearly appears that the documents are vital and not legible at the same time. Right of the petitioner therefore for making effective representation is clearly breached, and the further detention of the petitioner on this ground is bad in law. This view finds supports from a decision of the Division Bench of this Court in the matter of POKHRAJBHAI SOHANBHAI CHANDVEL VS. THE DISTRICT MAGISTRATE, SURAT & ORS., reported in 1991 (2) GLR 753. The order impugned, therefore, is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Bharuch, on 21.6.2003, under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair